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Attorneys for Plaintiff John Rinaldi

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

John Rinaldi, an individual,

Plaintiff,

v.

Porsche Cars North America, Inc.,
a corporation; and DOES 1 through
5, inclusive,

Defendants

CASE NO. 08CVU428 JAH NLS

Points and Authorities in Support of
Plaintiff's Motion for Remand

Hearing Date: May 27, 2008
Hearing Time: 2:30 p.m.
Action Filed: February 5, 2008

Plaintiff John Rinaldi ("plaintiff") respectfully submits these Points and
Authorities in support of his Motion to remand this case to the Superior Court of the
State of California, County of San Diego, North County Division (before the Honorable
Robert P. Dahlquist) because the state court claim (for restitution pursuant to California's
Song-Beverly Warranty Act, Civil Code §§ 1790 et seq.) predominates.

Points & Authorities in Support of Plaintiff's Motion for Remand

FILED
08 APR 11 PM 3:39
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *g* DEPUTY

"VIA FAX"

SUMMARY

On, or about, April 26, 2007, Plaintiff purchased a 2003 Porsche from Lexus Kearny Mesa.

The vehicle was purchased within, and the nonconformities began during, the manufacturer's, defendant Porsche Cars North America, Inc.'s, factory warranty period.

Soon after purchase, Plaintiff experienced continuing nonconformities with the vehicle, including, but not limited to, the following: difficulty getting into second gear; popping out of gear; defective first and second gear synchronizer; defective dog teeth; static noise from radio; abnormal clunking/clacking noise from rear of vehicle; intermediate shaft bearing cage failure; intermediate shaft bearing missing bearings; defective flange bearing; vehicle not starting; engine clunking when not starting; engine consuming too much oil; vehicle not starting; and a broken trip switch.

Despite confirmation of the nonconformities and repeated repair attempts, defendant has been unable to correct the nonconformities. These nonconformities substantially impair the use, value and/or safety of the vehicle. Accordingly, under California law, Plaintiff is entitled to the restitution sought in his state court complaint.

Plaintiff and his attorneys attempted, in good faith, to resolve this matter directly with defendant Porsche Cars North America, Inc. until Porsche Cars North America, Inc., without explanation, stopped responding to such efforts. In fact, plaintiff had been offered \$3,000.00 to settle this claim before seeking representation. Defendant Porsche Cars North America, Inc. never reiterated this offer, nor explained its withdrawal.

LEGAL AUTHORITY

The State Court claim for relief pursuant to California's Song-Beverly Consumer Warranty Act, Civil Code §§1790 et seq. predominates over plaintiff's federal claim.

Points & Authorities in Support of Plaintiff's Motion for Remand

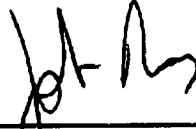
1 Federal law recognizes that state court claims can, and do, predominate over
 2 certain federal claims; and, as such, the federal court may decline to exercise supplemental
 3 jurisdiction. 23 U.S.C. §1367(c). Indeed, here, plaintiff's prayer for relief seeks the same
 4 remedies provided for under California's Song-Beverly Consumer Warranty Act. And,
 5 there is no exclusive federal prayer made.¹

6 CONCLUSION

7 Plaintiff's action is a straightforward California lemon law claim filed after
 8 defendant's refusal to entertain any reasonable pre-litigation settlement negotiations, and
 9 after withdrawing its initial settlement offer. For these reasons, the complaint should be
 10 remanded to state court.

11 DATE: April 11, 2008

12 LEMON LAW ADVOCATES
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 16 _____
 17 Jonathan D. McCue
 18 Stephen P. Polapink

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 24 ¹ If necessary, plaintiff is willing voluntarily to dismiss his federal claim in order to accommodate
 25 everyone's interests.